

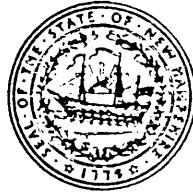
THE STATE OF NEW HAMPSHIRE

83-114-I

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January 12, 1984

Mrs. Jean R. Wallin, Chairman
New Hampshire Liquor Commission
Storrs Street
Concord, New Hampshire 03301

Dear Mrs. Wallin:

This is in response to your memorandum requesting an opinion on the validity of a policy governing the employment by the Commission of more than one member of an "immediate family."¹ Specifically, you have indicated that your Director of Marketing has proposed a policy of not hiring members of the same family anywhere in the agency. Immediate family members would be defined as wife, husband, children, mother-in-law, father-in-law, parents, step-parents, step-children, grandparents, grandchildren, brothers, sisters, legal guardian, daughter-in-law and son-in-law. The policy would apply to employment in all operations of the Commission, including retail stores, warehouses and the administrative offices. It is our opinion that a properly drafted policy on nepotism would not be in violation of any state or federal law or constitutional provision.

Nepotism laws, if properly and narrowly drafted, have generally been held to be valid under the Equal Protection Clause. Espinoza v. Thoma, 580 F.2d 346 (8th Cir. 1978);

¹Such laws or policies are often referred to as nepotism laws or policies.



Mrs. Jean R. Wallin, Chairman
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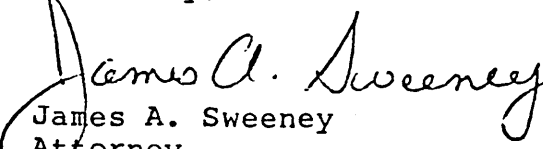
Keckeisen v. Independent School District, 509 F.2d 1062 (8th Cir. 1975), cert. den., 423 U.S. 833. Such a policy would have to be narrowly drafted. For example, although a nepotism policy may validly prohibit anyone in a supervisory position from hiring a close relative, barring the employment of a person in a position which had absolutely no contact with the position held by a relative may exceed the agency's authority. See, Bretz v. Center Line, 88 Mich. App. 451, 276 N.W.2d 617 (1979).

If the policy formally adopted by the Commission is to have general applicability to all hiring by the Commission, the rule-making provisions of RSA 541-A should be followed in adopting a policy on nepotism. RSA 541-A:3. In addition, because such a policy would clearly affect the hiring of new employees for the Commission in classified positions, such a policy should also be reviewed by the Personnel Commission.

Finally, due to the constitutional limits on a policy prohibiting nepotism, any such proposed policy should be sent to this office for review prior to its adoption by the Commission.

I trust that this has been responsive to your question. If you have any further questions, please feel free to contact me.

Sincerely,


James A. Sweeney
Attorney
Division of Legal Counsel

JAS:clp
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